IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 34924 of 2005(G)

PETITIONER:

CHELLAMMAL, W/O.LATE G.GANGADHARAN PILLAI
GANGACHAL GARDENS, PAZHAVEEDU.P.O,
ALAPPUZHA-9.

BY ADV. SRI.K.K.SATHEESH

RESPONDENTS:

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1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, MINISTRY OF HOME AFFAIRS,
FREEDOM FIGHTERS DIVISION,
LOK NAYAK BHAVAN, KHAN MARKET,
NEW DELHI-110 003.

2. STATE OF KERALA,
REPRENSETED BY THE SECRETARY,
GENERAL ADMINISTRATION (FFP.A) DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADV. SMT.M.LALITHA NAIR, CGSC
GOVERNMENT PLEADER SRI. V.T.K MOHAN FOR R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 34924/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO. H2/35218/2000 DATED 21/10/2000 OF THE DIST. COLLECTOR, ALAPPUZHA.

EXT.P2. COPY OF THE APPLICATION DT. 30/4/98 BY THE PETITIONER TO THE RESPONDENT.

EXT.P3. COPY OF THE PKC BY SRI. KUNJAN SUKUMARAN DT. 16/4/98.

EXT.P4. COPY OF THE AFFIDAVIT DULY ATTESTED BY THE JUDICIAL IST CLASS MAGISTRATE, ALAPPUZHA DT. 13/7/99 BY THE PETITIONER'S LATE HUSBAND TO THE DIST. COLLECTOR, ALAPPUZHA.

EXT.P5. COPY OF THE LETTER DT. 16/7/99 BY THE DIST. COLLECTOR, ALAPPUZHA TO THE R2.

EXT.P6. COPY OF THE REPRESENTATION DT. 11/11/05 BY THE PETITIONER TO THE R2.

EXT.P7. COPY OF THE NARC BY THE SUPDT OF POLICE, ALAPPUZHA DT. 9/9/05.

EXT.P8. COPY OF THE NARC BY THE CJM COURT, ALAPPUZHA IN CASE NO. P.E. 7/1122 ME.

EXT.P9. COPY OF THE PKC BY SRI. H.K. CHAKRAPANI DT. 4/09/05.

EXT.P10. COPY OF THE PKC BY SRI. T.F. YOHANNA DT. 5/09/05.

True copy

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T.R.RAMACHANDRAN NAIR, J.

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WP(C).No. 34924 of 2005-G.

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Dated this the 21st day of August, 2007.

J U D G M E N T

The widow of a freedom fighter is before this Court claiming Swathantrata Sainik Samman pension. Her late husband Sri.G.Gangadharan Pillai was a freedom fighter who was participated in the Punnapra-Vayalar movement during the freedom struggle. Against him an arrest warrant was issued by the Special Magistrate Court, Alappuzha in case No.P.E.7/1122 ME and in order to evade the arrest he had gone underground for a period of about ten months from October, 1946 to August, 1947. He was granted State pension as per the order of the District Collector dated 2.11.1986. He died on 12.7.2000 and thereafter the petitioner is getting the benefit of dependent family pension as per Ext.P1 order.

2. Ext.P2 is the application dated 30.4.1998 filed by her late husband under the Central Pention scheme. Ext.P3 is the personal knowledge certificate issued from a prominent freedom fighter Sri.Kunjan Sukumaran who had undergone imprisonment for a period of more than five years and

also is a recipient of SSS pension as well as the holder of 'Thamrapathra'. In Ext.P3 it is clearly mentioned that the petitioner remained underground from October, 1946 to August, 1947 which tallies with the period mentioned in Ext.P2 application. Ext.P5 is the letter sent by the District Collector to the State Government recommending the application. It is clearly mentioned therein that the late husband of the petitioner has been granted State pension considering his participation in the Punnapra-Vayalar struggle. It is issued based on Government letter dated 25.3.1999. Since no action was taken for a pretty long time the petitioner submitted Ext.P6 representation along with non-availability of records certificate issued by the Superintendent of Police, Alappuzha. The non-availability of records certificate from the Superintendent and from the Chief Judicial Magistrate Court, Alappuzha are produced as Exts.P7 and P8. Exts.P9 and P10 are the personal knowledge certificates from two prominent freedom fighters Sri.H.K.Chakrapani and Sri.T.F.Yohannan. In Exts.P9 and P10 also the period of underground suffering has been mentioned as October, 1946 to August, 1947.

3. The relief sought for is for a direction to the State Government to forward verification-cum-recommendation report. In the counter-affidavit filed by the State Government it is admitted in para.5 that the petitioner's late

husband was granted Kerala Freedom Fighters' Pension considering his claimed participation in the Punnapra-Vayalar struggle and also on the basis of the recommendation of the District Advisory Committee and after his death it was granted to the petitioner. The counter-affidavit reveals that the application has not been recommended for two reasons and they are: the Punnapra-Vayalar struggle started on 22.10.1946 but the certifiers have not mentioned the exact period of underground life and hence the genuineness of the claim is doubtful. Plainly this reason is unsustainable in the light of the fact that in Exts.P3, P5, P9 and P10 the certifiers have unanimously stated that the petitioner's late husband had remained underground for more than six months from October, 1946 to August, 1947. Therefore, the averment that the certifiers have not mentioned the underground period is patently wrong. Further the certifiers have stated the start of the underground suffering as from October, 1946 and merely because the struggle started on 22.10.1946 that will not defeat the claim of the petitioner. Therefore, for that reason, the refusal to forward recommendation is not correct.

4. Next is regarding the sufficiency of non-availability of records certificates produced. Going by the non-availability of records certificates produced they are acceptable. Ext.P7 is from the Superintendent of Police,

Alappuzha and Ext.P8 is from the Chief Judicial Magistrate Court, Alappuzha which satisfies the requirements evidently. The Chief Judicial Magistrate has clearly stated that the records are not available in that Court. In the absence of records the concerned authority can only say that the records relating to that case are not available. Hence the said reason attributing insufficiency of NARC is also not correct.

5. The stand taken that since official records in respect of the arrest was not available the claim cannot be recommended is not correct since it is admitted in the counter-affidavit that for the participation in the Punnapra-Vayalar struggle as recommended by the District Advisory Committee pension was granted to him which is now being continued in favour of the widow. Therefore, the fact that he was a genuine freedom fighter is established. Further in this case in para.5, recommendation of the District Collector is based on the direction of the State Government itself. Hence the present stand taken in the counter-affidavit appears to be without any justification.

6. For all these reasons, the objections stated in the counter-affidavit are unsustainable and there will be a direction to the 2nd respondent to forward fresh verification-cum-recommendation report to the first

respondent within six weeks from the date of receipt of a copy of this judgment. On receipt of the same the first respondent shall consider the application Ext.P2 and pass appropriate orders within two months thereafter. The claim of the petitioner for arrears shall be considered from the date of Ext.P2 which is dated 30.4.1998.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-